IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

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WRIT PETITION NO : 1826 of 2003

Between:

Ganapati Auto Owners & Workers Welfare Association., Railway Station., Rajahmundry. Rep.by its President B.S.Prasad.

..... PETITIONER

AND

1 The State of AP, rep.by its Secretary,Transport & R & B Department., Secretariat., Hyderabad.
2 The Regional Transport Officer, Regional Transport Office,

Lalacheruvu, Rajahmundry.
3 The Commissioner, State Transport Authority,
Boorugula Ramakrishna Rao Bhavan, Hyderabad.
4 The National Highway Authority of India, Rep.by its chairman

Maharanibagh, New Delhi.

(R-4 is impleaded as per Court Order

dated 11-12-2003 in WPMP.No.28614/2003)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus declaring the Resolution R.No.16856/R1/2003 dt.29-1-

2003 of State Transport Authority as illegal, arbitrary and without jurisdiction and action of respondents in restraining
3 seater autos from plying on NH 5 as illegal, arbitrary and violative of Article 14,19 and 21 of the constitution of India and consequently restrain the respondents and its officers preventing 7 and 3 seater autos from plying on National Highway No.5.

(The learned counsel has amended Prayer as per Court Order in WPMP.No.6830 of 2003, dated 27-03-2003)

Counsel for the Petitioner: MR.M.S.RAMACHANDRA RAO

Counsel for the Respondents 1 to 3: THE ADVOCATE GENERAL

Counsel for the Respondent No.4: M/S. M.V.KINI & CO

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WRIT PETITION NO : 2534 of 2003

Between:

1. M.Hanumantha Reddy, S/o Siva Reddy,

Aged about 34 years, Owner of Auto No.AP21 V 2916.

2. K.V.Nagi Reddy, S/o Eswar Reddy,

Aged about 42 years, Owner of Auto No.AP21 V 3238.

3. A.Nagi Reddy, S/o Sunki Reddy,

Aged about 25 years, Owner of

Auto No.AP21 T 9665.

4. A.Prabhakar Reddy, S/o Subba Reddy,

Aged about 26 years, Owner of

Auto No.AP21 V 3202.

5. A.Nageswar Reddy, S/o A.Hanumantha Reddy,

Aged about 54 years, Owner of Auto Nos.

AP21 V 2085, and AP21 V 3225.

6. Sudershan Reddy, S/o A.Pulla Reddy,

Aged about 35 years, Owner of Auto No.AP21 V 1669.

7. Y.Venkatarami Reddy, S/o Sheshi Reddy,

Aged about 62 years, Owner of Auto No.AP21 V 1494.

8. S.Mahabub Basha, S/o Pedda Sultan Miah,

Aged about 33 years, Owner of Auto No.AP21 V 5704.

9. R.Yellaramudu, S/o Pedda Maddileti,

Aged about 28 years, Owner of Auto No.AP21 V 4315.

10. D.S.Purushotham Reddy, S/o D.S.Hanumantha Reddy,

Aged about 38 years, Owner of Auto No.AP21 V 7209.

11. M.Srinivasulu, S/o M.Sivarmudu,

Aged about 26 years, Owner of Auto No.AP21 V 5109.

12. Md.Shareef, S/o Dada Miah,

Aged about 45 years, Owner of Auto No.AP21 V 1911.

13. G.Subhan, S/o G.Abdul Rawoof,

Aged about 36 years, Owner of Auto No.AP21 V 3927.

14. S.Salam Miah, S/o S.Gudu Miah,

Aged about 36 years, Owner of Auto No.AP21 V 2585.

15. D.Balaswamy, S/o Balachennaiah,

Aged about 64 years, Owner of Auto No.AP21 V 5719.

16. S.Khaja Mohiddin, S/o S.Bada Sultan Sab,

Aged about 29 years, owner of Auto No.AP21 V 9971.

17. R.Bhaskar Reddy, S/o R.Sanjeeva Reddy,

Aged about 37 years, Owner of Auto No.AP21 T 9423.

(petitioners 1 to 17 are residents of Pedda Tekuru (V),

Kallur (M), Kurnool District)

18. R.Dasarath Kumar, S/o R.Subbaiah,

Aged about 35 years, Owner of Auto No.AP21 V 5720.

19. Bhaskar Reddy, S/o A.Veera Reddy,

Aged about 30 years, Owner of Auto No.AO21 V 4520.

20. K.Dhananjayudu, S/o Chinna Anjaneyulu,

Aged about 40 years, Owner of Auto No.AP21 V 4492.

21. B.Pratap Reddy, S/o B.Rami Reddy,

Aged about 30 years, Owner of Auto No.AP21 T 9582.

22. S.Rasheed Miah, S/o Madar Saheb,

Aged about 40 years, Owner of Auto NO.AP21 V 2187.

23. S.Ravi Prasad, S/o S.Rajasekhar,

Aged about 25 years, Owner of Auto No.AP21 V 2513.

24. T.Lingamaiah, S/o Pedda Swamy,

Aged about 42 years, Owner of Auto No.AP9 V 5511.

25. T.Jayaramudu, S/o T.Narayana,

Aged about 40 years, Owner of Auto No.AP21 V 3130.

26. B.Karim Miah, S/o B.Hussain Miah,

Aged about 40 years, Owner of Auto No.AP21 T 9973.

27. E.Raman Goud, S/o Giddaiah Goud,

Aged about 40 years, Owner of Auto Nos.AP21 V 5709 & AP21 V 2897.

28. T.Venkateswarlu, S/o T.Narayana,

Aged about 45 years, Owner of Auto No.AP21 V 4502.

29. G.Sunkanna, S/o G.Sunkanna,

Aged about 50 years, Owner of Auto No.AP21 V 4586.

30. S.Bande Nawaz, S/o Khaja Peera,

Aged about 34 years, Owner of Auto No.AP21 V 2125.

31. Smt. Dasari Padmavathi, W/o Dasari Prakasham,

Aged about 30 years, Owner of Auto No.AP21 V 3284.

32. R.Subbaiah, S/o Narayana,

Aged about 55 years, Owner of Auto No.AP21 T 9896.

(Petitioners 18 to 32 are residents of Chinna Tekur (V),

Kallur Mandal, Kurnool District.)

..... PETITIONERS

AND

1. The State of A.P., rep.by its Secretary,

Transport and R&B Department,

Secretariat Buildings, Hyderabad.

2. The Commissioner,

State Transport Authority,

Burugula Ramakrishna Rao Bhavan,

Hyderabad.

3. The Regional Transport Officer,

Regional Transport Office,

Kurnool.

4. The Superintendent of Police,

Kurnool District, Kurnool.

5 National Highway Authority of India,

Rep.by its Chairman, Maharanibagh, New Delhi.

(R-5 is impleaded as per Court Order in

WPMP.No.8700 of 2004, dated 22-06-2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the

2nd respondent in passing the Resolution Memo No.16856/R.1/2002, dated 29-01-2003 prohibiting the operation of 3 wheeled contract carriages on all National Highways excluding Municipal and Gram Panchayat limits in A.P. as illegal, arbitrary and without jurisdiction and consequently restrain the respondents and their officers from preventing 3 wheeled vehicles from plying on N.H.No.7.

(prayer is amended as per Court Order in WPMP.No.22693 of 2004, dated 22-06-2004)

Counsel for the Petitioners:MR.C.PRAKASH REDDY

Counsel for the Respondents 1 to 4: The Advocate General

Counsel for the Respondent No.5: M/s. M.V.KINI & CO.

The Court made the following COMMON ORDER:

Since the issue involved in both the writ petitions and relief claimed is one and the same, they are being disposed of by this common order.

In both the writ petitions, the action of the respondents in restraining 3 wheeled and 7 seater autos from plying on the National Highway Nos.5 and 7 is challenged before this Court. As per resolution vide R.No.16856/R1/2003, dated 29-01-2003 passed by the State Transport Authority, operation of 3 wheeled contract carriages on all National Highways excluding Municipal and Gram Panchayat limits was prohibited.

Subsequent to the filing of W.P.No.1826 of 2003 by Sri Ganapathi Auto

Owners and Workers Welfare Association, Railway Station, Rajahmundry, another W.P.No.2534 of 2003 was filed by the Auto Owners of Kurnool District contending that preventing 3 wheeled and 7 seater autos from plying on the national highways is an unreasonable restriction and is in violation of fundamental rights guaranteed under Article 14, 19 and 21 of the Constitution of India. The National Highways Authority (of India Act) was constituted under the National Highways Authority Act, 1988 (for short “the NHAI Act”) and on such constitution, all the National Highways are vested in the Authority. In view of the same, the State Transport Authority has no power to pass resolution prohibiting plying of 3 wheeled and 7 seater autos on the national highways. It is for the National Highways Authority of India to regulate and control the plying of vehicles on the highways vested in it, or entrusted to it, for the proper management under Section 16(d) of the NHAI Act. Since the NHAI Act is a later special enactment to the Motor Vehicles Act, 1988, the State Transport Authority will not have any jurisdiction to regulate and control plying of the vehicles on the national highways. The resolution passed by the State Transport Authority is in violation of the principles of natural justice since no objections have been called for from the persons likely to be affected before passing of such resolution.

Opposing the Writ Petition No.1826 of 2003, first respondent filed counter stating that there are about 1.86 lakhs of 3 wheeled contract carriages on the rolls of the State, which are slow moving vehicles meant for transporting passengers covering short distances particularly, in and around the urban areas. These
3 wheeled vehicles have been often overloaded and there is every likelihood of losing balance at high speed on national highways due to shift in the center of gravity. During the calendar year 2002, 581 persons had lost their lives in road accidents involving
3 wheeled contract carriages. Under Section 115 of the Motor Vehicles Act read with Rule 397 of the A.P. Motor Vehicle Rules, 1989, A.P. State Transport Authority is empowered to impose restriction on the operation of motor vehicles in a specified area or in respect of any road. In exercise of the said powers conferred, impugned resolution came to be passed resolving to prohibit the operation of three wheeled contract carriages on all National Highways excluding Municipal and Village sites of Gram Panchayat limits in Andhra Pradesh. Since the prohibition excludes municipal limits, the petitioners in both the writ petitions can ply their vehicles within the municipal limits and village sites of Gram Panchayat only. The prohibition imposed is a reasonable restriction and does not violate the fundamental rights enshrined

under Article 14, 19 and 21 of the Constitution of India.

Fourth respondent filed separate counter stating that National Highway of India has been constituted under the NHAI Act. The provisions relate to the rights of the NHAI for regulating and maintaining the highways are in the realm of enabling provisions which confer the power and authority on the NHAI to exercise the same whenever considered expedient and necessary in the interests of maintenance of the highways. If any regulations or prescriptions are made by NHAI in pursuance of such authority, the same would be binding and compelling on all concerned but the same would not mean that the regulation of the highways would be the exclusive preserve of the NHAI. In case of any inconsistency with the directives and regulations of NHAI and also for due implementation and execution thereof, other authorities including the State Government, RTA Authorities etc., could perform supplemental and ancillary role. Their duty for maintaining and regulating the highways, though not provided under the Act, would still be available for exercising the State functions albeit no such functions or duties could be in contravention or opposition to the NHAI actions or directives. The State Government on a considered study of the issue relating to the plying of 7 seater and 3 wheeled autos, taken a view that the same are hazardous and unsafe on the National Highways both for the inmates and other vehicles and accordingly issued necessary directions preventing the plying of said vehicles on the National Highways. Since the NHAI has not framed any regulations or issued any directions contrary to the stipulation made by the State authority or they are conflicted with any such stipulations or regulations of the NHAI, the same cannot be held to be unauthorized or without jurisdiction of the RTA for the respective State Governments to prevent such vehicles plying on the national highways.

Mr. M.S.RamaChandra Rao, learned counsel appearing for the petitioner association in W.P.No.1826 of 2003 contended that under Section 4 of the National Highways Act, 1988 all national highways are vested in the Union of India. Under this Act, the National Highways Authority is responsible for development, maintenance and management of the national highways, which are vested in it by the Central Government, and for the proper management of highways, the Authority will regulate and control the plying of vehicles on the highways vested in it.

Functions of the authority are enumerated under Section 16 of the NHAI Act and under Section 16(2)(d) of the NHAI Act, the National Highways Authority will regulate and control the plying of vehicles on the highways vested in, or entrusted to, it for the proper management thereof. The words “regulate”, “control” and “vested” occurring in Section 16(d) are clear pointers of exclusive power of the authority under the NHAI Act to control traffic on the National Highways. Word “control” accompanies by the word “vest”, the High Court alone will have jurisdiction to regulate the same. For the said proposition, he placed reliance on **CHIEF JUSTICE OF ANDHRA PRADESH AND ANOTHER ETC. v. L.V.A.DIKSHITULU AND OTHERS and CORPORATION OF THE CITY OF NAGPUR AND ANOTHER v. RAMCHANDRA G.MODAK AND OTHERS**. He further contended that the provisions of special enactment override the provisions of the general enactment is a settled law as held by the Supreme Court in **DAMJI VALJI SHAH AND ANOTHER, GHANSHYAMDAS v. LIFE INSURANCE CORPORATION OF INDIA AND OTHERS, P.V.HEMALATHA v. KATTAM KANDI PUTHIYA MALIACKAL SAHEEDA AND ANOTHER, GOBIND SUGAR MILLS LIMITED v. STATE OF BIHAR AND OTHERS and THE BELSUND SUGAR COMPANY LIMITED v. THE STATE OF BIHAR AND OTHERS**. In view of the same, the power to control traffic under chapter VIII of the Motor Vehicles Act is inapplicable in respect of National Highways and the resolution, so passed by the State Transport Authority is without jurisdiction. Consequently, no restrictions can be imposed on the 3 wheeled and 7 seater autos for plying on the national highways.

Mr. C.Prakash Reddy, learned counsel appearing for the petitioners in W.P.No.2534 of 2003 adopted the same.

Per contra, the learned Advocate General contended that as per the Statement of Objects and Reasons, under which, the National Highway Authority of India Act is enacted clearly discloses that entrustment of the national highways to the authority constituted under the Act for the proper management thereof but the same cannot be read as regulating the traffic on the said highways. The said regulation will be only for proper management but not otherwise. Section 16(1) should be read in such a manner, which authorizes the authority constituted to whom the national highways are entrusted for the purpose of proper management. The powers conferred on the national highway authority shall not be construed as authorizing the disregard by the authority of any law for the time being in force, which clearly indicates that any action

taken or restrictions imposed under any law cannot be disregarded by the National Highways Authority constituted under the NHAI Act but the same has to be implemented when the highways are entrusted to it for the proper management.

Under Section 115 of the Motor Vehicles Act, 1988 it is for the State Government or any authority authorized on its behalf to prohibit or restrict the use of the vehicles by a notification or to prohibit or restrict the use of the vehicles as specified in the notification.

Under Rule 397 of the Andhra Pradesh Motor Vehicles Rules, 1989, the State Transport Authority and Regional Transport Authority have conferred powers to impose necessary restrictions for the use of the motor vehicles and to prohibit or restrict the use of motor vehicles generally or of a particular class of vehicles in a specified area or in respect of any road. In view of the same, the resolution passed by the State Transport Authority does not suffer from any infirmities and the same is well within the jurisdiction of the authority to pass such a resolution.

Before answering the rival contentions, an insight into the Statement of Objects and Reasons of the National Highways Act and the statutory provisions in this regard is necessary.

A reading of the Statement of Objects and Reasons in enacting the NHAI Act clearly discloses that it is for the Central Government to take over development and maintenance of the national highway system through the creation of an autonomous National Highways Authority and the said authority should take over, in a phased manner the functions presently being performed by the State Public Works Departments. The main functions of the Authority have been enumerated in clause (5) of the Statement of Objects and Reasons, which would be to develop and maintain national highways whose management and operation is vested in the Central Government and if any land requires by the authority for the public purpose, such land may be acquired for the authority under the provisions of the Land Acquisition Act, 1894 and the authority will have powers to enter into and perform any contract up to a certain value, and the authority will be responsible for the development, maintenance and management of the national highways which are vested in it by the Central Government and the authority on behalf of the Government is empowered to collect fees for services or benefits rendered by it and for the proper management of highways, the authority will regulate and control the

plying of vehicles on the highways vested in it and it can raise funds with the approval of the Central Government through the floating of bonds, issue of debentures etc. It is not in dispute that Section 16 of the NHAI Act specifies the functions of the authority subject to the rules made by the Central Government in this behalf to develop, maintain and manage the national highways and any other highways vested in or entrusted to the authority by the Government. Sub-Section (2) clause (d) of Section 16 of the NHAI Act, reads as under:

> "Regulate and control of plying of vehicles on the Highways vested in, or entrusted to, it for the proper management thereof".

Sub-section (3) of Section 16 reads as under:

> (3) Nothing contained in this Section shall be construed as:
>
> a. authorizing the disregard by the Authority of any law for the time being in force; or
>
> b. authorizing any person to institute any proceeding in respect of a duty or liability to which the Authority or its officers or other employees would not otherwise be subject under this Act.

The Motor Vehicles Act, 1988 was enacted by the Parliament and has come into force on issuance of the notification with effect from 01-07-1989 whereas the NHAI Act has come into force with effect from 15-06-1989. Section 115 of the Motor Vehicles Act, 1988 reads as under:

> "The State Government or any authority authorized in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the

> driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under Section 116 at suitable places.
>
> Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction."

In order to get its true import, it is necessary to view the enactment in retrospect; the reasons for enacting it, the evils it was to end and the objects it was to sub serve. The Act has therefore to be viewed as a whole and its intention determined by construing all the constituent parts of the Act together and not by taking detached sections or to take one word here and another there. It is a well-settled rule of interpretation that the Court should, as far as possible, construe a statute so as to avoid tautology or superfluity.

(AIR 1957 S.C. 532, AIR 1975 SUPREME COURT 43 and AIR 1979 SUPREME COURT 1029)

Keeping in view of the above law in mind, if the object which is sought to be achieved in enacting the National Highways Act and constituting National Highway authorities, which is evident from the Statement of Objects and Reasons, is only to regulate and control plying of the vehicles on the highways entrusted to the authority for the proper management thereof including imposing the prohibition for the purpose of maintaining the high ways and regulating the traffic in such maintenance or during the course of formation of the national highway after acquiring the lands for such formation. Whereas the Motor Vehicles Act, 1988 is a special enactment, which empowers granting of permission and prohibiting its use in the specified places by the State Government with whom the vehicles are registered.

In (1) supra, the reliance placed by the learned Counsel for the petitioners, there is a clear proposition that the word "control" is accompanies by the word "vest" disclose that the High Court will have exclusive jurisdiction. The decisions (2) and (3) cited

supra, on which reliance placed by the petitioners are not applicable to the facts of the present case since the Supreme Court considered the power of the authority to take disciplinary action against the officers, servants of the employer under whom they are serving. Equally, the special enactment overrides the provisions of the general enactment, provided that the special enactment will have powers to deal with the granting of permissions to the motor vehicles to ply in a particular area, which is not controlled by the National Highway Authority. The decisions (4), (5) and (6), which were relied upon by the petitioners, are inapplicable to the facts of the present case. Since the State Transport Authority is empowered to regulate all the motor vehicles in a specified area or on a specified route, it can restrict the movement of the said vehicles in a particular area keeping in view the interest and safety of passengers, who are travelling in the said vehicles, as per rules.

In view of the same, I do not see any force in the contention made by the learned Counsel for the petitioners that the State Transport Authority cannot place such restrictions on the movement of the vehicles registered with it on the national highways. The learned counsel for the petitioners further contended that the impugned resolution did not disclose about the result of deaths occurred in the highways and is silent about safety of passengers if the 3 wheeled and 7 seater autos ride on the national highways. The resolution for prohibiting the use of particular class of vehicles in the specified areas need not assign any reasons since it was taken as a measure in the safety of passengers.

In view of the same, I do not see any merit in the writ petitions. The writ petitions were failed and they are liable to be dismissed.

Both the writ petitions are accordingly dismissed. No order as to costs.

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(A.GOPAL REDDY, J)

22nd JUNE, 2004.

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To

1 The State of A.P., rep.by its Secretary,

Transport and R&B Department,

Secretariat Buildings, Hyderabad.

2 The Commissioner,

State Transport Authority,

Burugula Ramakrishna Rao Bhavan,

Hyderabad.

3 The Regional Transport Officer,

Regional Transport Office,

Kurnool.

4 The Regional Transport Officer., Regional Transport Office.,Lalacheruvu
Rajahmundry.

5 The National Highway Authority of India, Rep.by its chairman
Maharanibagh New Delhi.

6 The Superintendent of Police,

Kurnool District, Kurnool.

7 Two CCs to the Government Pleader for Roads & Buildings, A.P.High Court Buildings, A.P., Hyderabad. (OUT)

8 Two CD copies.